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ESTATE OF DELION JOHNSON,  
D.J., M.J., and MICHELLE COOPER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

ESTATE OF DELION JOHNSON, et al.,  
Plaintiffs,  
vs.  
COUNTY OF SACRAMENTO, et al.,  
Defendants.

Case No.

**PLAINTIFFS D.J. AND M.J.'S  
EX PARTE MOTION FOR APPOINTMENT  
OF GUARDIAN AD LITEM**

**I. INTRODUCTION**

Plaintiffs D.J. and M.J., minors, request the Court to appoint Marlisa Hill, their mother and legal custodian, as guardian *ad litem* for purposes of prosecuting this action.

**II. STATEMENT OF RELEVANT FACTS**

D.J. and M.J. are plaintiffs in the above-captioned matter. *See* ECF No. 1. D.J. and M.J. are minors. Declaration of Marlisa Hill ¶¶ 2–3. Marlisa Hill is the biological mother of D.J. and M.J. and maintains sole custody of them. *Id.* ¶¶ 1, 4. Marlisa Hill is unaware of any conflicts of interest that would preclude her appointment as D.J. and M.J.'s guardian *ad litem* for purposes of prosecuting this action. *Id.* ¶ 6. Marlisa Hill consents to the appointment as D.J. and M.J.'s guardian *ad litem*. *Id.* ¶ 7.

**III. REQUEST FOR APPOINTMENT OF GUARDIAN AD LITEM**

“District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c), to safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th

1 Cir. 2011). “A minor ... who does not have a duly appointed representative may sue by a next friend or  
 2 by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—  
 3 to protect a minor ... who is unrepresented in an action.” Fed. R. Civ. P. 17(c)(2).

4 An individual’s capacity to sue is determined by the law of the individual’s domicile. Fed. R. Civ.  
 5 P. 17(b). Under California law, an individual under the age of 18 is a minor. Cal. Fam. Code § 6502. A  
 6 minor may bring suit as long as a guardian conducts the proceedings. Cal. Fam. Code § 6601. A court  
 7 may appoint a guardian *ad litem* to represent a minor’s interests in the litigation. Cal. Code Civ. Proc. §  
 8 372(a). In making the determination concerning the appointment of a particular guardian *ad litem*, a court  
 9 shall consider whether the minor and the guardian have divergent interests. Cal. Code Civ. Proc. §  
 10 372(b)(1).

11 The decision to appoint a guardian *ad litem* “must normally be left to the sound discretion of the  
 12 trial court.” *See, e.g., United States v. 30.64 Acres of Land*, 795 F.2d 796, 804 (9th Cir. 1986); *Williams*  
 13 *v. Superior Court*, 147 Cal. App. 4th 36, 47 (Cal. Ct. App. 2007) (“broad discretion”). When there is no  
 14 conflict of interest, the guardian *ad litem* appointment is usually made on *ex parte* application and  
 15 involves minimal exercise of discretion by the trial court. *In re Marriage of Caballero*, 27 Cal. App. 4th  
 16 1139, 1149 (Cal. Ct. App. 1994). “Generally, there is no inherent conflict of interest when a minor is  
 17 represented by a parent who is a party to the lawsuit and who has the same interests as the child.” *J.B. v.*  
 18 *Tuolumne Cty. Superintendent of Sch’s*, 2021 U.S. Dist. LEXIS 137123, at \*5 (E.D. Cal. July 22, 2021).

19 Accordingly, a parent is recognized as an appropriate guardian *ad litem* on behalf of a minor  
 20 child. *See, e.g., T.G. v. Mariposa Cty. Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 157079, at \*2 (E.D. Cal.  
 21 Sep. 12, 2019); *Basque v. County of Placer*, 2017 U.S. Dist. LEXIS 117290, at \*1–3 (E.D. Cal. July 26,  
 22 2017); *Huginin v. Rocklin Unified Sch. Dist.*, 2015 U.S. Dist. LEXIS 103410, at \*4–5 (E.D. Cal. Aug. 6,  
 23 2015); *see also Gonzalez v. Reno*, 86 F. Supp. 2d 1167, 1185 (S.D. Fla. 2000) (“[W]hen a parent brings  
 24 an action on behalf of a child, and it is evident that the interests of each are the same, no need exists for  
 25 someone other than the parent to represent the child’s interests under [Fed. R. Civ. P.] 17(c).”).

#### 26 **IV. CONCLUSION**

27 For the reasons stated, the Court should appoint Marlisa Hill as D.J. and M.J.’s guardian *ad litem*  
 28 for the purposes of prosecuting this action. A proposed order is attached herewith.

1 Dated: July 5, 2023

Respectfully Submitted,

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4 By: \_\_\_\_\_

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